

AMENDED IN ASSEMBLY MARCH 15, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 305

Introduced by Assembly Member Robert Pacheco

February 8, 1999

An act to ~~amend Sections 980 and 1196 of~~ add Section 12021.2 to the Penal Code, relating to ~~criminal procedure~~ firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 305, as amended, Robert Pacheco. ~~Enhance warrants~~ Firearms.

Existing law provides that any person who has been convicted of a felony who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

This bill would provide that any previously convicted felon guilty of violating the above provision, whose offense also involves the unlawful carrying of a concealed firearm in a public place or the unlawful carrying of a loaded firearm in a public place, shall be guilty of a felony punishable by 3, 4, or 5 years in the state prison. This bill would also provide that any person guilty of violating this new crime who had previously been convicted of a specified violent felony shall be subject to a mandatory additional penalty of 3 years in state prison. By creating a new crime and enhancement, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law requires a clerk, judge, or justice to issue a bench warrant on application of the prosecuting attorney whenever the defendant fails to appear in court as required by law or does not appear for judgment when his or her personal appearance is necessary. Existing law also provides that the clerk, judge, or justice shall require the appropriate agency to enter a bench warrant issued on a private surety-bonded felony case into the national warrant system and that if the appropriate agency fails to enter the bench warrant into the national warrant system, and the court finds that this failure prevented the surety or bail agent from surrendering the fugitive into custody, prevented the fugitive from being arrested or taken into custody, or resulted in the fugitive's subsequent release from custody, the court having jurisdiction over the bail shall, upon petition, set aside the forfeiture of the bond and declare all liability on the bail bond to be exonerated.~~

~~This bill would instead provide that the clerk shall notify, as specified, the appropriate law enforcement agency that it is required to enter each bench warrant issued on a private surety-bonded felony case into the National Crime Information Center (NCIC). The bill would further provide that the appropriate law enforcement agency, the court, and the surety-bonded company shall have certain duties with respect to the entry of the bench warrant into the NCIC, as specified. By imposing new duties on local entities, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 980 of the Penal Code is~~
2 ~~amended to read:~~
3 ~~980. (a) At any time after the order for a bench~~
4 ~~warrant is made, whether the court is sitting or not, the~~
5 ~~clerk may issue a bench warrant to one or more counties.~~
6 ~~(b) (1) The clerk shall notify the appropriate law~~
7 ~~enforcement agency that it is required to enter each~~
8 ~~bench warrant issued on a private surety-bonded felony~~
9 ~~case into the National Crime Information Center~~
10 ~~(NCIC). This notification may be in the form of a notation~~
11 ~~on the warrant, or a separate hard copy document given~~
12 ~~to the appropriate law enforcement agency directing~~
13 ~~them to make the NCIC entry, or the notification may be~~
14 ~~made via data transfer in the case of agencies with~~
15 ~~automated warrant systems. The appropriate law~~
16 ~~enforcement agency shall enter the warrant into NCIC~~
17 ~~within five working days, provided the warrant contains~~
18 ~~all the NCIC-mandated data fields for entry into that~~
19 ~~system. If the warrant is lacking NCIC-mandated data~~
20 ~~fields it shall be returned to the court for correction, or in~~
21 ~~the case of data transfers in automated warrant systems,~~
22 ~~the court shall be notified in writing within two working~~
23 ~~days to make the corrections. The court shall make the~~
24 ~~necessary corrections within five working days and~~
25 ~~return the warrant via the established protocol, wherein~~
26 ~~the appropriate law enforcement agency shall make the~~
27 ~~NCIC entry within five working days. If the court is~~
28 ~~unable to provide the NCIC-mandated data fields for~~
29 ~~entry into that system because the information had not~~

1 been provided to the court, the court shall notify the
2 surety-bonded company and be exempt from complying
3 with this section until the time that the surety-bonded
4 company is able to provide the missing mandated
5 information. The appropriate law enforcement agency
6 shall provide the surety-bonded company, or its agent,
7 with the missing information, if available, when
8 requested by the surety-bonded company, or its agent, in
9 writing.

10 (2) If the appropriate law enforcement agency fails to
11 enter the bench warrant into the national warrant system
12 (NCIC), and the court finds that this failure prevented
13 the surety or bond agent from surrendering the fugitive
14 into custody, prevented the fugitive from being arrested
15 or taken into custody, or resulted in the fugitive's
16 subsequent release from custody, the court having
17 jurisdiction over the bail shall, upon petition, set aside the
18 forfeiture of the bond and declare all liability on the bail
19 bond to be exonerated.

20 (3) If a forfeited bail bond is to be exonerated under
21 the mandates of this section, the surety-bonded company,
22 or its agent, shall provide the court with reasonable proof
23 that the subject of the warrant was located by the
24 surety-bonded company, or its agent, personally
25 contacted by a law enforcement agency, or released from
26 incarceration in a city, county, state, or federal institution,
27 and the warrant was not served due to the appropriate
28 law enforcement agency's failure to enter the warrant
29 into NCIC.

30 (4) NCIC policy allows warrants to be entered into the
31 NCIC system when the appropriate law enforcement
32 agency is willing to extradite the warrant subject from at
33 least one adjacent state, or the warrant may be entered
34 for officer safety purposes when there is no intention of
35 extradition. Surety-bonded felony bench warrants shall
36 be entered according to NCIC policy and pursuant to the
37 entry criteria of the appropriate law enforcement
38 agency, or the district attorney's office that approves
39 extradition. If the surety-bonded company desires a
40 warrant issued on one of their surety-bonded cases to be

1 entered into NCIC differently than pursuant to the
2 criteria of the appropriate law enforcement agency, or
3 district attorney's office that approves extradition, the
4 surety bonded company, or its agent, shall petition the
5 court to have the warrant entered pursuant to the
6 surety bonded company's criteria, and the surety bonded
7 company shall accept responsibility for all costs involved
8 to extradite the subject from any jurisdiction pursuant to
9 criteria that is outside of the normal criteria of the
10 appropriate law enforcement agency, or district
11 attorney's office approving extradition.

12 SEC. 2. Section 1196 of the Penal Code is amended to
13 read:

14 1196. (a) The clerk, or the judge or justice, if there is
15 no clerk, must at any time after the order issue a bench
16 warrant into one or more counties.

17 (b) (1) The clerk, or the judge or justice, shall notify
18 the appropriate law enforcement agency that it is
19 required to enter each bench warrant issued on a private
20 surety bonded felony case into the National Crime
21 Information Center (NCIC). This notification may be in
22 the form of a notation on the warrant, or a separate hard
23 copy document given to the appropriate law
24 enforcement agency directing them to make the NCIC
25 entry, or the notification may be made via data transfer
26 in the case of agencies with automated warrant systems.
27 The appropriate law enforcement agency shall enter the
28 warrant into NCIC within five working days, provided
29 the warrant contains all the NCIC mandated data fields
30 for entry into that system. If the warrant is lacking
31 NCIC mandated data fields it shall be returned to the
32 court for correction, or in the case of data transfers in
33 automated warrant systems, the court shall be notified in
34 writing within two working days to make the corrections.
35 The court shall make the necessary corrections within
36 five working days and return the warrant via the
37 established protocol, wherein the appropriate law
38 enforcement agency shall make the NCIC entry within
39 five working days. If the court is unable to provide the
40 NCIC mandated data fields for entry into that system

~~1 because the information had not been provided to the
2 court, the court shall notify the surety-bonded company
3 and be exempt from complying with this section until
4 such time that the surety-bonded company is able to
5 provide the missing mandated information. The
6 appropriate law enforcement agency shall provide the
7 surety-bonded company, or its agent, with the missing
8 information, if available, when requested by the
9 surety-bonded company, or its agent, in writing.~~

~~10 (2) If the appropriate law enforcement agency fails to
11 enter the bench warrant into the national warrant system
12 (NCIC), and the court finds that this failure prevented
13 the surety or bond agent from surrendering the fugitive
14 into custody, prevented the fugitive from being arrested
15 or taken into custody, or resulted in the fugitive's
16 subsequent release from custody, the court having
17 jurisdiction over the bail shall, upon petition, set aside the
18 forfeiture of the bond and declare all liability on the bail
19 bond to be exonerated.~~

~~20 (3) If a forfeited bail bond is to be exonerated under
21 the mandates of this section, the surety-bonded company,
22 or its agent, shall provide the court with reasonable proof
23 that the subject of the warrant was located by the
24 surety-bonded company, or its agent, personally
25 contacted by a law enforcement agency, or released from
26 incarceration in a city, county, state, or federal institution,
27 and the warrant was not served due to the appropriate
28 law enforcement agency's failure to enter the warrant
29 into NCIC.~~

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31 NCIC system when the appropriate law enforcement
32 agency is willing to extradite the warrant subject from at
33 least one adjacent state, or the warrant may be entered
34 for officer safety purposes when there is no intention of
35 extradition. Surety-bonded felony bench warrants shall
36 be entered according to NCIC policy and pursuant to the
37 entry criteria of the appropriate law enforcement
38 agency, or the district attorney's office that approves
39 extradition. If the surety-bonded company desires a
40 warrant issued on one of their surety-bonded cases to be~~

~~entered into NCIC differently than pursuant to the
criteria of the appropriate law enforcement agency, or
district attorney's office that approves extradition, the
surety bonded company, or its agent, shall petition the
court to have the warrant entered pursuant to the
surety bonded company's criteria, and the surety bonded
company shall accept responsibility for all costs involved
to extradite the subject from any jurisdiction pursuant to
criteria that is outside of the normal criteria of the
appropriate law enforcement agency, or district
attorney's office approving extradition.~~

~~SEC. 3. No reimbursement shall be made from the
State Mandates Claims Fund pursuant to Part 7
(commencing with Section 17500) of Division 4 of Title
2 of the Government Code for costs mandated by the
state pursuant to this act. It is recognized, however, that
a local agency or school district may pursue any remedies
to obtain reimbursement available to it under Part 7
(commencing with Section 17500) and any other
provisions of law.~~

*SECTION 1. Section 12021.2 is added to the Penal
Code, to read:*

*12021.2. (a) Any previously convicted felon guilty of
violating Section 12021, whose offense also involves the
carrying of a concealed firearm in a public place in
violation of Section 12025 or the carrying of a loaded
firearm in a public place in violation of Section 12031, shall
be guilty of a felony punishable by three, four, or five
years in the state prison, but shall not, in addition, be
punished pursuant to Section 12021, 12025, or 12031.*

*(b) Any person guilty of violating subdivision (a) who
had previously been convicted of a violent felony
enumerated in Section 12021.1 shall be subject to a
mandatory additional penalty of three years in state
prison.*

*SEC. 2. No reimbursement is required by this act
pursuant to Section 6 of Article XIII B of the California
Constitution because the only costs that may be incurred
by a local agency or school district will be incurred
because this act creates a new crime or infraction,*

1 *eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section*
3 *17556 of the Government Code, or changes the definition*
4 *of a crime within the meaning of Section 6 of Article*
5 *XIII B of the California Constitution.*

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